

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DISTRICT**

|                                       |   |                            |
|---------------------------------------|---|----------------------------|
| KNL CONSTRUCTION, INC.,               | ) |                            |
|                                       | ) |                            |
| Plaintiff and Counterclaim Defendant, | ) |                            |
|                                       | ) |                            |
| v.                                    | ) | Case No. 6:14-cv-03184-DPR |
|                                       | ) |                            |
| KILLIAN CONSTRUCTION CO., INC.,       | ) |                            |
|                                       | ) |                            |
| Defendant and Counterclaim Plaintiff. | ) |                            |

**KILLIAN CONSTRUCTION CO., INC.'S MOTION FOR EXTENSION OF  
SCHEDULING ORDER DEADLINES AND TRIAL SETTING**

Killian Construction Co., Inc. (hereinafter "Killian"), by and through undersigned counsel and pursuant to Fed. R. Civ. P. 16 and W.D. Mo. L.R. 16.3, hereby requests the Court extend the pre-trial scheduling order deadlines and continue the trial setting in this matter to a date after December 1, 2016, to provide Killian additional time to complete its damages calculation, file a Rule 55(b) motion, and schedule a hearing to effectuate judgment prior to trial as indicated in the Court's March 8, 2016 Order (Doc. 107).

In support of this motion, Killian states as follows:

1. On October 29, 2015, this Court entered an Order staying all deadlines in this case and stated it would "address the scheduling and deadlines of this case upon resolution of this matter." (Doc. 95).
2. On March 8, 2016, this Court entered an Order striking KNL Construction, Inc.'s pleadings in their entirety and directing the Clerk of the Court to make an entry of default against KNL. (Doc. 107).

3. In the same March 8, 2016 Order, the Court stated Killian may file a motion for default judgment pursuant to Fed. R. Civ. P. 55(b) and if and when Killian files such motion, the Court will set a hearing as needed to effectuate judgment. Id.

4. Killian understood the Court's October 29, 2015 Order staying the case to include the trial, pre-trial conference, and pre-trial obligations in the scheduling order in addition to discovery and dispositive motion deadlines.

5. Killian further understood the Court to address the scheduling and deadlines in its March 8, 2016 Order, as indicated in the October 29, 2015 Order, by stating Killian may file a Rule 55(b) motion and the Court would schedule a hearing as needed to enter and effectuate judgment.

6. Based on Killian's review of the pleadings, the stay was not otherwise lifted and/or the deadlines and scheduling were not otherwise addressed.

7. Based on the Court's August 8, 2016 Order it appears Killian's understanding of the stay and changes to the deadlines and scheduling order were not correct and the Court "believes the scheduling order deadlines are still in effect." (Doc. 112).

8. Killian intended and, if permitted, still intends to file the Rule 55(b) motion referenced in the Court's Order.

9. However, as the construction project at issue in this matter was complex and involved multiple other subcontractors, material suppliers, and other issues, Killian's damages' consultant is still working on and has not yet completed its damages calculation in order for Killian to file its Rule 55(b) motion.

10. Killian has been informed there is a high likelihood that its consultant will not be able to complete its damages calculation in order for Killian to comply with the upcoming pre-trial deadlines and/or in advance of the September 12, 2016 trial date.

11. Killian has been informed, understands, and believes Killian's consultant will have the damages calculation completed within the next 60 days.

12. Therefore Killian requests up October 17, 2016, to file its Rule 55(b) motion pursuant to this Court's March 8, 2016 Order.

13. Killian further requests the Court continue the trial of this matter to a time after December 1, 2106, or some other time sufficient to allow Killian to file its Rule 55(b) motion within the next 60 days and to allow the Court to schedule a hearing to effectuate judgment on the Rule 55(b) motion in advance of the trial and any pre-trial obligations, as indicated in the March 8, 2016 Order.

14. As KNL's pleadings have been stricken and an entry of default has already been entered, the only item that remains for trial is Killian's damages.

15. As KNL is not currently represented by counsel and cannot represent itself without counsel at any trial or hearing on damages, KNL will not be prejudiced by an extension of the trial date. Instead, Killian contends the parties and the judicial system will benefit from allowing additional time for a complete and well-reasoned damages calculation.

16. Good cause for extension of the deadlines exists.

17. Pursuant to Local Rule 16.3, a detailed proposed amendment to the previously entered scheduling order is attached hereto as Exhibit A.

WHEREFORE, Killian requests the Court enter an amended scheduling and trial order extending the pre-trial scheduling order deadlines and continuing the trial setting in this matter to a date after December 1, 2016, to provide Killian additional time to complete its damages calculation, file a Rule 55(b) motion, and schedule a hearing to effectuate judgment prior to trial, and for such other and further relief as the Court deems just and proper in these premises.

***Respectfully submitted,***

/s/ Wade M. Early

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***Attorneys Killian Construction Co., Inc.***

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 17, 2016, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record and also sent the foregoing via regular and certified mail to:

Kim Hawkins  
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Moscow, PA 18444

/s/ Wade M. Early

***Attorney for Killian Construction Co., Inc.***